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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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AUG 3 1992

In the Matter of:

Policies and Rules for Licensing
Fallow 800 MHz Specialized Mobile
Radio (SMR) Spectrum Through A
Competitive Bidding Process

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RM-7985

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF THE FLORIDA SMR COALITION

Respectfully submitted,

The Florida SMR Coalition

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SUMMARY

The initial Comments of other parties in this proceeding generally support the arguments raised by The Florida SMR Coalition ("Coalition"). These other mobile communications entities found significant flaws in Fleet Call's innovator block proposal.

Other parties raised issues that are not germane, however, to the consideration of regulatory changes to the SMR industry. The Commission should not, as other parties suggested, employ this proceeding as a means to reexamine whether telephone companies should be permitted to offer SMR service. Nor should Fleet Call's petition be a cause for the review of the regulatory distinctions between common carriers and private carriers.

Finally, of the several changes recommended for innovator blocks, two merit particular note. First, the Coalition believes that if the innovator block concept is established, it should not apply to any locations that are either inside or outside waiting list areas. The Coalition believes that NABER's suggestion, to use General Category channels to implement innovator blocks, may have merit. However, these channels must remain available, until licensing occurs for the innovator, for SMR entities who wish to expand their facilities.

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REPLY COMMENTS OF THE FLORIDA SMR COALITION

The Florida SMR Coalition ("Coalition"), pursuant to Section 1.405 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission")^{1/} by its attorneys, hereby submits Reply Comments responsive to the initial Comments of other parties to the Petition for Rule Making of Fleet Call, Inc. ("FCI" or "Fleet Call").^{2/}

^{1/} 47 C.F.R. § 1.405.

^{2/} RM-7985, Public Notice Report Number 1889. By Order released June 9, 1992 (DA-711) the Private Radio Bureau extended the Comment period until July 17, 1992. Reply Comments are due on August 3, 1992.

On July 17, 1992 the Coalition submitted Comments opposing, in part, Fleet Call's Petition. The Coalition stated that adoption of FCI's proposal is not necessary to promote the implementation of digital technology. Rather, the Coalition said that marketplace forces will encourage the conversion to digital technology and the seamless nationwide Specialized Mobile Radio ("SMR") coverage that FCI envisions. It also stated that regulatory impediments should not hamper the development of the SMR industry. The Coalition, therefore, supported FCI's proposal to remove existing regulatory roadblocks to SMR growth. The Coalition pointed out that the innovator block concept is unworkable at 800 MHz. The use of innovator blocks would be more appropriate, according to the Coalition, in spectrum where there are currently no users. The Coalition also stated that the imposition of a freeze in order to implement innovator blocks would unfairly limit the ability of existing operators to expand, and thus, would be contrary to the public interest. Finally, the Coalition opposed the use of auctions in connection with the authorization of SMR spectrum.

The majority of the parties submitting Comments in this proceeding agreed with the positions of the Coalition. These Reply Comments, therefore, point out the widespread concurrence within the mobile communications industry on many of the issues addressed by the Coalition. However, there were new matters raised by the initial Comments of several parties. Some entities argued that this proceeding should prompt the Commission to permit telephone company entry into the SMR industry. Additionally, many of these same parties contended that Fleet Call's petition highlights an alleged need to equalize the treatment of common and private carriers. The

Coalition strongly opposes these proposals. Finally, the American Mobile Telecommunications Association ("AMTA") and the National Association of Business and Educational Radio ("NABER") submitted alternate proposals for the adoption of the innovator block concept. The Coalition takes this opportunity to address those proposals as well.

REPLY COMMENTS

A. The Majority of Commenting Parties Agreed With The Positions of the Coalition.

The Coalition raised five primary points in its initial Comments. Its positions were widely shared by other parties. First, the Coalition pointed out that market forces will produce the result that Fleet Call wishes to impose upon the SMR industry. Of the Comments submitted, regrettably few were offered by other SMR operators. However, Idaho Communications Limited Partnership ("Idaho Communications"), one of the few SMR entities submitting Comments, shared the Coalition's understanding that market place forces will produce a migration to digital technology. It stated "the SMR industry stands ready to invest in and incorporate digital technology to enhance existing spectrum capacity in all markets, both large and small as soon as the technology is commercially readily available [emphasis in original].^{3/}

Second, the Coalition stated in its initial Comments that there are less disruptive means to accomplish Fleet Call's goals. Several parties agreed with the Coalition's argument. The Utilities Telecommunications Council ("UTC") noted, as did the

^{3/} Comments of Idaho Communications at 7-8.

Coalition, that there are other changes to the SMR regulatory structure, which, if implemented, could directly address Fleet Call's concerns.^{4/} Similarly, Idaho Communications noted that "the Commission's own regulatory restrictions have prevented consolidation and expansion of the SMR industry... Simply by eliminating the loading requirements and 40-mile rule restrictions, the Commission could accomplish many of the objectives advanced by Fleet Call, while still permitting existing SMR licensees in the markets to participate in market consolidations."^{5/} While the Coalition does not necessarily endorse a complete elimination of the loading requirements and 40-mile rule limitations at this point, it agrees with Idaho Communications that there are other means, less drastic, that can accomplish many of the purposes Fleet Call seeks to achieve. The Special Industrial Radio Service Association, Inc. ("SIRSA") also agreed, stating that the Commission's rules do not facilitate the implementation of wide area SMR systems and the introduction of advanced digital technologies.^{6/}

The Coalition's initial Comments also argued that the innovator block concept is unworkable with 800 MHz channels designated primarily for SMR purposes. Several other parties, who independently evaluated FCI's proposal to use innovator blocks with 800 MHz channels, came to the same conclusion. The Coalition's Comments specifically cited Melbourne, Florida as an example of a location where Fleet Call proposed the use of an innovator block but, where there are truly no channels available. This specific

^{4/} Comments of UTC at p. 6.

^{5/} Comments of Idaho Communications at p. 19-20.

^{6/} Comments of SIRSA at p. 6.

example was also cited by NABER. It concluded "the maps demonstrate that every frequency listed by Fleet Call for Melbourne is short spaced and not usable for an innovator block."^{7/} NABER research produced similar results at other MSAs within waiting list areas. The comments of Idaho Communications also support the Coalition's contention regarding the nonavailability of innovator block channels in those locations where Fleet Call believes that they can be employed.^{8/}

The majority of parties who addressed the issue agreed with the Coalition that the Commission should not freeze the authorization of 800 MHz channels designated for SMR purposes that Fleet Call would employ in innovator blocks.^{9/} As UMN noted, while the concept of innovator blocks may be subject to debate "that is absolutely no reason to make second class citizens out of the thousands of legitimate existing SMR operators who may wish to expand, or to make bona fide new entrants subservient to Fleet Call's interests."^{10/} Moreover, the uncertainty of the Commission's ability to secure authority to auction spectrum, as Fleet Call requests, makes the freeze even more dangerous. It is conceivable that the Commission would freeze the authorization of 800 MHz SMR channels, thereby limiting growth for legitimate operators, and never receive auction authority. If the innovator block concept was thereafter abandoned because of

^{7/} Comments of NABER at p. 8.

^{8/} See, in particular, Exhibit C of the Comments of Idaho Communications.

^{9/} See Comments of United Mobile Networks, Inc. ("UMN"), Telecommunications Industry Association, Land Mobile Section ("TIA"), the Ericsson Corporation ("Ericsson"), AMTA, SIRSA and NABER.

^{10/} Comments of UMN at p. 5.

the failure to receive auction authority, existing operators would have been irreparably harmed, in the interim. There is no justification for imposing a freeze on the authorization of these channels until such time as a licensing mechanism has been approved.

Finally, the Coalition argued in its initial Comments that auctions are an unacceptable method of licensing. The great majority of parties submitting Comments agreed with the Coalition's position. As the Coalition noted in its initial Comments, this issue has been the subject of considerable debate within the industry, and within Congress. However, it is not clear whether Congress will provide the Commission with auction authority. Accordingly, it would be irresponsible to proceed with the exploration of this proposal, with its emphasis on auctioning spectrum, in light of the uncertain Congressional direction.

B. Entry of Telephone Companies Into the SMR Industry.

Several entities argued that Fleet Call's proposal is evidence that the Commission should permit entry into the SMR industry by telephone companies. The Commission recently disposed of a long standing proceeding which questioned whether telephone companies should be permitted to secure SMR authorizations.^{11/} If there is merit to Fleet Call's position, its further development should not be burdened with the establishment of a record necessary to justify whether telephone companies should be permitted entry to the SMR industry. Moreover, the arguments used to support entry by

^{11/} Order, adopted June 19, 1992, P.R. Docket No. 86-3, Report No. DC 2143 (June 24, 1992).

telephone companies, in response to Fleet Call's Petition, are flawed. For example, Southwestern Bell Corporation ("SBC") states that if common carriers were allowed to use SMR frequencies, the result "would be more likely to stimulate their use because common carriers could then use those frequencies in providing auxiliary SMR and dispatch services".^{12/} As the Coalition pointed out in its initial Comments, the channels that are not in operation today are unused, not because service is unavailable, but because there is no demand. There is no reason to believe that these same services, offered by a common carrier, would produce more demand than today's private carriers have been able to generate.^{13/}

The Coalition remains opposed to the entry of wireline telephone companies into the SMR industry at this point. The SMR business is still maturing. The Coalition noted that there are rule changes that can be accomplished to promote further development of the industry. It is not until these regulatory restrictions, as Fleet Call itself has pointed out, are lifted, that the industry will have an opportunity to fully mature and provide all of the services possible to potential customers. Once these remaining regulatory restrictions are eliminated, the Commission may wish to again address the question of wireline entry. However, until that time, existing SMR operators should have an opportunity to fully exploit the use of the spectrum allocated for SMR operations in a regulatory environment which more fully fosters their optimum use.

^{12/} Comments of SBC at p. 4.

^{13/} As noted by the Coalition and others, there are deregulatory measures the Commission could take to enable private carriers to offer services that would better meet potentially unsatisfied demands.

C. There Is No Reason To Address Common Carrier/Private Carrier Disparities In the Context of this Proceeding.

Several entities argue that Fleet Call's proposals highlight an alleged inequality in the regulation of SMR operators and mobile communications common carriers.^{14/} Typical of that sentiment are the Comments of Telocator, which state that "these disparities already impede the ability of cellular carriers to compete with private carriers, and this impediment will only increase if Fleet Call's Petition is granted without prior adoption of a more equitable regulatory structure."^{15/} The Coalition expresses no opinion as to whether common carrier mobile systems should be further deregulated. However, that question is largely irrelevant as to whether there should be additional deregulation of SMR licensees, whether the deregulation is of the nature proposed by Fleet Call, or not. Any deregulatory action taken with respect to SMR systems must be evaluated only with respect to compliance with the Communications Act. No aspect of Fleet Call's proposal (apart from the need to obtain auction authority from Congress) would contravene the Act. Moreover, the Commission must fundamentally evaluate whether these deregulatory actions would promote the public interest. To the extent that deregulation of the SMR industry would provide more mobile communications options for the public, it is axiomatic that the public interest will be well served.

^{14/} See, e.g., Comments of Telocator, National Telephone Cooperative Association ("NTCA"), McCaw Cellular Communications, Inc. ("McCaw") and Centel Corporation ("Centel").

^{15/} Comments of Telocator at p. 5.

The arguments of those commenting parties who suggest that Fleet Call's proposal, because it would deregulate the SMR industry, would somehow disadvantage cellular carriers, are remarkable. Cellular operators have a duopoly in the market where they are licensed. They are also authorized to operate with over 300 channels. SMR operators, until recently, often were required to compete against dozens of other service providers in the same market. Moreover, even today, the most successful SMR operator generally is licensed for no more than between 100 and 150 channels per market. Indeed, Fleet Call's proposal would authorize channels in a maximum block of 105 25 kHz channels, with 175 other SMR pool channels, as well as other 800 MHz frequencies available to competitors. The Commission must, therefore, reject any suggestion that cellular carriers are somehow disadvantaged by deregulatory efforts directed at the SMR industry. Cellular providers have been, from the outset, provided with a much more attractive market position, both in terms of capacity and competitive structure.

D. Alternative Innovator Block Proposals.

Several entities suggested modification of Fleet Call's proposals concerning the size and/or location of the innovator blocks. The Coalition reiterates that it is opposed to the authorization of SMR pool channels in innovator blocks, as defined by Fleet Call. That plan would unfairly disadvantage existing operators both because of the differential regulatory structure it would create and the elimination of the target channels for future growth. As noted above, there are other deregulatory efforts that can be adopted which will accomplish many of Fleet Call's objectives.

Nevertheless, should the Commission adopt the innovator block concept, the Coalition believes it requires modification, as recommended by several of the other commenting parties. As an initial matter, The Coalition believes it is critical that any channels designated for innovator use remain available for the expansion of existing, loaded facilities, where their SMR channels have been depleted, up until the time the innovator channels are actually licensed. AMTA suggested that innovator blocks be established in Metropolitan Statistical Areas (MSAs) wholly or partially outside the 100 mile radius of wait list locations. The Coalition agrees that no portion of a wait list area should be included as available for innovator block channels. The existence of a waiting list is clear evidence that there is at least rising interest in the provision of SMR service in that area. Because a critical assumption of Fleet Call's petition is that SMR channels are laying fallow there is no reason to impose an innovator block where there is a waiting list. However, the Coalition disagrees with AMTA with respect to MSAs which fall partially inside wait list areas. Only if an MSA is wholly outside of a waiting list area should the innovator block concept be employed. It is illogical to award a block of channels and permit a licensee to only serve a portion of a market with those frequencies. In order to serve an MSA, such an operator could only use non-innovator channels in one part of an MSA, and innovator channels in another. Moreover, if an area is partially within and partially outside of a wait list area, it is likely that the MSA itself may be part of the wait list soon, because of growth from the wait listed area. The Coalition believes that, if the innovator block concept is approved, it should only apply for locations that are wholly outside wait listed areas.

Finally, the Coalition notes that NABER recommended the use of innovator blocks with General Category channels.^{16/} To the extent that NABER's proposal would preserve SMR frequencies for expansion by existing operators and for new SMR entrants, the Coalition prefers the recommendation to Fleet Call's. However, General Category channels are also an important source of spectrum for SMR licensees who wish to expand in areas where there are no longer SMR pool channels available. Therefore, until such time as innovator blocks, using General Category channels, are authorized, those channels should be fully available, as they are today, for existing SMR operators to expand their systems. In many locations, such as Florida, there are no longer SMR pool channels available. However, General Category frequency assignments are available to fully loaded SMR systems. Accordingly, the Commission should take no action which would inhibit the ability of existing operators to employ those channels.

CONCLUSIONS

There was agreement expressed in the Comments of other parties regarding the issues raised by the Coalition in its initial Comments. In particular, other parties supported the Coalition's contentions that: 1) market forces will produce the result that Fleet Call wishes to impose upon the SMR industry; 2) there are less disruptive means to accomplish Fleet Call's goal; 3) the innovator block concept is unworkable at 800 MHz; 4) the proposed application freeze will limit growth for legitimate operators; and 5) auctions are an unacceptable method of licensing.

^{16/} Comments of NABER at p. 6.

Several additional issues were raised in the initial Comments. First, several parties argued that Fleet Call's petition highlights the need for entry of wireline telephone companies into the SMR industry. The Coalition strongly opposes this proposal at the present time. The Coalition also rejects the arguments of those entities who stated that Fleet Call's suggestions underscore a need for the Commission to examine the distinctions between private carrier and common carriers. Whatever merits there may be to deregulating the provision of common carrier services, those issues are unrelated to how SMR entities can better provide service to their customers.

Finally, AMTA and NABER present alternative means for implementing Fleet Call's innovator block proposal. The Coalition agrees with AMTA that no location wholly inside a waiting list area should be considered available for an innovator block. It disagrees with AMTA, however, which stated that areas partially within waiting list locations could also be awarded innovator block channels. Finally, the Coalition, while opposed to the innovator block concept, believes that there is more merit to the NABER proposal to use General Category channels to implement innovator blocks, than SMR pool frequencies. In the event that the Commission proceeds with that recommendation, however, it is urged to keep the General Category channels available for SMR users wishing to expand their systems, even if the result would be a diminution of the innovator block.

WHEREFORE, THE PREMISES CONSIDERED, The Florida SMR Coalition hereby submits the foregoing Reply Comments and requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

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DATED: August 3, 1992
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I hereby certify that on this 3rd day of August, 1992, I placed in the United States mail, postage prepaid a copy of the foregoing Reply Comments of The Florida SMR Coalition to the following:

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